

In regard to the rejection on the combination of Ronden and Humphrey, Ronden was cited to show a marker post and Humphrey was cited to show “an integral anchoring flap with a flexible living hinge” This is in error. Applicant has reviewed the Humphrey reference and has not been able to find any reference to Humphrey disclosing a “flexible living hinge” . Furthermore, applicant has been unable to find any reference in either Humphrey or Ronden to the problem solved by applicant, namely, how to place an anchor flap on a post and yet be able to package and ship the post without having the protruding flap from interfering with shipping and handling yet prevent withdrawal when the post is in the ground. It is submitted that the office is using the teaching of applicants invention since neither Ronden or Humphrey teach the use of a “flexible living hinge” nor do they even recognize the problem solved by applicant.

In summary, it is submitted that Humphrey does not show flaps but shows “barbs” (Column 2 lines 43-45). If Humphrey shows barbs protruding at an angle from an article his specification fails to disclose that Humphrey has a flap with a living hinge that can be positioned in one position for transport and in another position for burial. Accordingly, Humphrey fails to make the claimed invention obvious.

The office has commented on claims 1 and 7 that intended use does not differentiate the claims. Applicant is unsure of the statutory basis of the rejection but it is assumed that claim 7 is rejected under 112. In any event the applicant traverses the rejection and submits the rejection is in error. Claim 7 specifically recites the post is “sufficiently stiff

to permit the marker post to driven into a top layer of soil” It is submitted that the difference between sufficient and insufficient is not an intended use. Applicant specifically refers to the characteristics of the post, namely that the post is sufficiently stiff that it can be driven in the ground. It is submitted that claim 7 includes a positive limitation and applicant requests withdrawal of the objection to claim 7.

Claims 2, 6, and 12 were rejected as being unpatentable over Ronden and Humphrey et al. as applied in claims 1, 3- 5, 7 and 11 as stated above , and further in view of Stuart (US 6,646,084) and Arthur (US 4,522,530). Applicant submits that dependent claims 2, 6 are allowable for the same reasons that independent claim 1 is allowable as stated herein before.

The office stated Stuart was cited to show second and third anchoring flap having a “flexible living hinge”. Since only claim 2 claims multiple flaps it is believed the rejection on Stuart applies only to claim 2. In any event, applicant submits that Stuart also fails to disclose a living hinge. Note, in particular that in column 3 lines 37-38 where Stuart states the fin is cut from a “single sheet of metal” (emphasis added) which he goes on to state may be pushed from the fin. Note , he fails to disclose a living hinge or a flexible living hinge as called for in claim 2.

Arthur was cited to show the use of cap. Since only claims 6 and 12 recite a weather cap it is believed that the rejection based on Arthur applies to only claims 6 and 12. Applicant submits for the afore stated reason the parent claims 1 is allowable over the primary

references. In addition, it is pointed out that Arthur does not have a weather resistant cap since he forms an open cup that will collect rain as well as dirt. If rain is collected in his open cup or plug 84 and the temperature falls below the freezing point the ice will expand causing the plug to crack. It is submitted placing a cup to catch material as shown in Stuart is not a weather resistance cap.

The office also objected to claims 2, 6, and 12 with respect to intended use. It is submitted the rejection is in error since neither dependent claims 2, 6 or 12 refer to any intended use as cited by the office. Instead the claims refer to the operation of the invention and not to an intended use. Applicant traverses the rejection if the rejections is maintained clarification of such objection to claims 2, 6, and 12 is requested.

Claims 8-10 were rejected under "35 U.S.C. 103(a) as being anticipated by Cornou (US 4,249,357) in view of Stuart (US 6,461,084). It is assumed the office meant obvious rather than anticipated.

The office stated Cornou was cited to show a marking post composed of a flexible resilient polymer plastic and made reference to column 2 lines 63-66. However, a reference thereto does not reveal a flexibly resilient polymer plastic but merely refers to a synthetic resin, which may be polyurethane. It is submitted that there is no teaching of applicant's claimed characteristics in Cornou but instead Cornou lists a specific type of resin without regard to the characteristics that have been incorporated into the resin.

The office stated that Stuart was cited to show that it would have been obvious to modify the post of Cornou as to include “integral anchoring flaps with flexible living hinges attached to a panel”. Applicant submit the rejections is in error. Stuart uses separate members 35 and therefore are not integral as called for in claims 8-10. In addition there is no teaching of a “living hinge” in Stuart. Furthermore there is no teaching in Stuart that his fingers 35 are movable from a closed position to an open position as cited in claims 8-10. In addition Stuart fails to disclose flaps with “sufficient memory to stay in the open position” as called for in claims 8-10.

The office also object to claims because the whereby clause does not define any structure. The objection regarding the whereby cause is respectfully traversed. It is not the whereby clause that has the limitation but the flaps that have the limitation. Applicant, submits that claim 8 specifically states the “flap has a sufficient member to stay in the open poison until the post can be embedded” (emphasis added). Withdrawal of the objection is requested

The office further objected to the use of the term sufficient in claims 8-10. The applicant traverses since the applicant refers to characteristics of the material and applicant submits that there is a characteristics difference between sufficient and insufficient.

The office objected to claims 1, 3,6, 7 and 12 under the judicially created doctrine of obviousness type double patenting as being unpatentable over the claims 1-4 of U.S. patent 6,099,203 in view of Humphrey et al. (Us 4,084,914) and claims 8-9 as being

unpatentable over the claims 1-2 of U.S. patent non 6,099,203 in view of Humphrey et al (U.S. 4,084,914)

Applicant respectfully traverses the rejection. First the inventions are different inventions. The 6,099,203 patents claims improvements to marking posts namely a resilient marking post with internal webs and no anchoring flaps. The present invention claims improvements to marking posts namely a marking post with an anchoring flap that can be in one condition for shipping and handling and another position for insertion into the ground. These are separate and distinct inventions which are independently patentable. A review of the claims of 6,099,203 clearly brings forth the distinction noted above.

It is submitted that the claims 8-10 are not obvious in view of the prior art and therefore any basis for double patenting is in error.

Accordingly, it is submitted that claims 1-12 are in allowable form and a notice of allowance is respectfully requested.